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September 25, 2009

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Hearing Officer's Decision*

Name of Case: Personnel Security Hearing

Date of Filing: April 30, 2009

Case Number: TSO-0748

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual's suspended access authorization should not be restored.

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I. BACKGROUND

In January 2008, the DOE conducted a Personnel Security Interview with the individual (the January 2008 PSI) regarding various issues related to his eligibility for access authorization. In February 2008, the DOE conducted a follow-up Personnel Security Interview (the February 2008 PSI) concerning the individual's alleged unauthorized use during a January to March 2005 time frame of the DOE's Central Personnel Clearance Index (CPCI). The CPCI is a technology system containing sensitive information that tracks active security clearances held by Federal and contractor employees

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1/ Decisions issued by the Office of Hearings and Appeals (OHA), with names and other personal identifying information deleted, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine at <http://www.oha.doe.gov/search.htm>.

of the DOE. DOE Exhibits 7 and 8. In October 2008, the individual voluntarily subjected himself to a DOE-administered polygraph test concerning his past use of the CPCI. See DOE Polygraph Examination Report, DOE Exhibit 9.

In January 2009, the Manager of the DOE area office where the individual is employed (the Manager) suspended the individual's access authorization and, on April 7, 2009, he issued a Notification Letter to the individual. DOE Exhibit 3. Enclosure 1 to this letter, which is entitled "Information Creating a Substantial Doubt Regarding Eligibility for Access Authorization," states that the individual's behavior has raised security concerns under Sections 710.8(g), (l), and (f) of the regulations governing eligibility for access to classified material (Criteria G, L and F). 2/

With respect to Criterion G, Enclosure 1 finds that information indicating that the individual installed software on his work computer in early 2005 giving him unauthorized access to the DOE's CPCI system raises the concern that he violated or disregarded regulations, procedures, or guidelines pertaining to the CPCI technology system.

With regard to Criterion L, Enclosure 1 states that the individual's unauthorized use of DOE software to access CPCI information in early 2005 indicates that he engaged in unusual conduct which tends to show that he is not honest, reliable or trustworthy.

With regard to Criterion F, Enclosure 1 indicates that the individual deliberately misrepresented, falsified, and omitted significant information from his 2008 Personnel Security

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2/ Criterion G concerns involve information that an individual has failed to protect classified matter and violated or disregarded regulations, procedures, or guidelines pertaining to classified or sensitive information technology systems. 10 C.F.R. § 710.8(g). Criterion L concerns relate, in relevant part, to information that a person "[e]ngaged in any unusual conduct or is subject to any unusual circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security . . . ." 10 C.F.R. § 710.8(l). Criterion F concerns involve information that an individual has deliberately misrepresented, falsified, and omitted significant information on DOE forms or at a DOE security interview. 10 C.F.R. § 710.8(f).

Interviews. Enclosure 1 states that at his January 2008 PSI, the individual was not able to explain his claim that he was authorized in early 2005 by the DOE and a DOE contractor employer to install DOE software on his work computer which was necessary for him to gain access to the DOE's CPCI. It also states that the individual received a written reprimand from this DOE contractor employer in May 2005 for installing this software without approval.

Enclosure 1 next finds that at the January 2008 PSI, the individual could not explain how he received access to the CPCI using the DOE software (hereinafter the "CPCI access disc") in early 2005, and that he routinely changed his story to fit with the questions he was asked. Enclosure 1 finds that at his February 2008 PSI, the individual again changed his story by indicating other possibilities for obtaining the CPCI access disc in early 2005, such as by mail or from his previous employer, and he stated that he did not know the location of the CPCI access disc that he used to install CPCI on the work computer of his new DOE contractor employer. See Enclosure 1 to Notification Letter, DOE Exhibit 3.

As modified by a stipulation of the parties, 3/ Enclosure 1 now states that at an October 2008 DOE polygraph interview, the individual offered additional explanations for his possession of the DOE's CPCI access disc to obtain a computer link to the CPCI system. At that time, he admitted that he did not have authorization in early 2005 to load the CPCI program on his DOE contractor work computer, and that he received assistance from DOE headquarters by personally informing them that he needed the information, without any independent authorization from his employer. At this interview, he also stated that he accidentally removed Personally-Identifiable Information (PII) from his work location when he retired from a DOE contractor position in January 2005, and that when he discovered the form containing this information, he shredded it. 4/

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3/ See DOE Exhibit 3-B, Paragraph I(E).

4/ Although the DOE's concern about the individual's improper handling of a DOE document containing PII appears in the amendment to Paragraph I(E) of the DOE's Criterion F concerns, I find that this admission by the individual is more appropriately considered as a Criterion L concern.

## II. *THE JUNE 2009 HEARING*

At the individual's request, a hearing was convened on June 24, 2009, to afford him an opportunity to submit information to resolve these concerns. <sup>5/</sup> At the hearing, testimony was received from seven persons. The DOE presented the testimony of a DOE classification officer. The individual, who was represented by counsel, testified and presented the testimony of a DOE contractor formerly employed as a DOE headquarters systems support technician for the DOE CPCI application (the CPCI support technician). The individual also presented the testimony of an individual who also worked for the DOE contractor where the individual's misuse of CPCI allegedly occurred (the DOE contractor employee). Finally, the individual presented the testimony of his wife, a friend who worked for several years at the same DOE facility as the individual (the work friend), and a friend since high school who worked at the same DOE facility as the individual (the long time friend).

The hearing testimony focused on the individual's efforts to explain his actions in early 2005, when he transferred his access to the CPCI system to a new DOE contractor position, but did not obtain a new authorization. He also explained how in early 2005 he accidentally removed from the DOE facility where he worked a document containing PII when he left his former DOE contractor position. The DOE classification officer provided information concerning the procedural requirements for gaining access to CPCI, and the CPCI technician discussed his interactions with the individual who asked for assistance in keeping his access to CPCI when he changed employment. The individual also presented testimony concerning his general character, work habits, reliability and honesty.

## III. *APPLICABLE STANDARDS*

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with

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<sup>5/</sup> The hearing was reconvened by telephone on June 30, 2009, to permit two additional witnesses to testify. The individual also provided additional testimony on June 30, 2009.

evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing*, Case No. VSO-0002 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing*, Case No. VSO-0005 (1995), *aff'd*, Case No. VSA-0005 (1995). See also 10 C.F.R. § 710.7(c).

#### IV. ANALYSIS OF TESTIMONY AND FINDINGS

As stated above, the DOE's concerns under Criteria G and L involve the individual's unauthorized use of a CPCI access disc and contacting DOE personnel to obtain unauthorized access to the DOE's CPCI system when he changed employment from one DOE contractor to another in January 2005. There is also a Criterion L concern involving his improper disposal of a DOE document containing PII that he discovered among personal papers that he took home when he changed employment in 2005. At the hearing, the individual admitted that he did not follow correct procedures for obtaining DOE authorization for possessing a CPCI access disc, and for accessing the DOE's CPCI system in January 2005. He testified that he obtained the CPCI access disc from authorized personnel at his former employer, and that he obtained CPCI system access from a technician at DOE headquarters by explaining that he had a legitimate need for access to the DOE's CPCI system in his new DOE contractor position. The DOE's Criterion F concerns arise from the vague and conflicting explanations that the individual provided at his 2008 PSIs for how he obtained the CPCI access disc and access to the CPCI system. In this regard, he testified that in 2008, he no longer had a clear recollection of how he obtained the CPCI access disc that he used to format his new work computer in early

2005, and that his efforts to recall the circumstances account for the vague and conflicting explanations that he provided to the DOE. As discussed below, I find that the individual has not mitigated the Criteria G, L and F concerns.

*A. The DOE's Criterion G Concerns*

The proper safeguarding of classified or sensitive information goes to the very heart of maintaining national defense and security. Thus, the failure to protect such information in accordance with security regulations raises very serious concerns. As stated in the *Revised Adjudicative Guidelines*, ¶ 33, "[d]eliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern." 6/ See also, *Personnel Security Hearing, Case No. TSO-0007* (2003).

In the present case, the Notification Letter asserts that the individual's apparent use of previous work contacts to covertly gain access to the CPCI system violates several DOE policies, orders and operating procedures. Moreover, it states that the DOE has confirmed that his previous authorization for CPCI system access did not transfer to the DOE contractor who issued the reprimand, and that no one at the DOE acknowledges providing him with a copy of the CPCI access software disc. 7/

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6/ The "Adjudicative Guidelines Approved by the President in Accordance With the Provisions of Executive Order 12968", were originally published as an appendix to Subpart A of the Part 710 regulations at 66 Fed. Reg. 47061 (September 11, 2001). See *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, Guideline K, Paragraph 33, 34, at <http://www.archives.gov/isoo/pdf/hadley-adjudicative-guidelines.pdf> (December 29, 2005).

7/ At the individual's February 2008 PSI, the DOE security specialist stated to the individual that he recently had contacted the office of the DOE's CPCI administrator. He stated that the data base maintained in that office indicated only that the individual had received permission to access the CPCI system as an employee of the DOE contractor that he left in January 2005. He stated that the data base indicated that no permission to access the CPCI system was given to the individual as an employee of the  
(continued...)

At the hearing, the DOE classification officer testified that the CPCI system is considered a very sensitive information system by the DOE because it contains personal information of DOE clearance holders such as their names, addresses, social security numbers, and places of birth, as well as the current status of each person who has or has had a DOE security clearance. In addition, the entry for each DOE clearance holder contains codes that identify areas of DOE concern such as drug use or financial problems or mental problems. He stated that this information could be used by hostile intelligence collectors to effectively target individuals with DOE clearances. TR at 17. He stated that the CPCI is protected by requiring potential CPCI system users to submit a form which identifies the person seeking access and justifies their need for access. While this form is not signed by the requesting user, it must be signed by the DOE Office sponsoring the user and by the System Application Manager. The DOE classification officer stated that once an individual is authorized to use the system, that person signs a user agreement which has the rules about how the data is to be used. TR at 18-20. 8/ He testified that this user agreement specifically provides that users will immediately notify DOE headquarters of any changes in their organization or employment status so appropriate action can be taken regarding their logon status. TR at 26.

After reviewing the transcripts of the individual's January and February 2008 PSIs, I conclude that the individual has consistently maintained that his efforts to access the CPCI system when he began employment with a new DOE contractor in January 2005 were undertaken with the knowledge and approval of DOE personnel and his new contractor supervisor and co-workers. When he was initially asked about this issue at the January 2008 PSI, he stated that when he began employment with the new DOE contracting firm in January 2005, he was told that his job would involve reviewing the current status of DOE security clearance holders, and he concluded that he would need the same access to the DOE's CPCI system that he had in

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7/ (...continued)

DOE contractor whom he began to work for in January 2005. February 2008 PSI at 4.

8/ The DOE counsel then introduced a copy of the current application form, entitled "Request for DOE Integrated Safeguards and Security Logon ID", and the individual user's agreement as DOE Exhibit 10. The forms indicates that application form has been used by the DOE since November 1996, and the user agreement since January 1998.

his previous position. He stated that he discussed his need for CPCI system access with his new supervisor, co-workers, and his new employer's computer technician. He stated that he then obtained a CPCI access disc, and that he contacted the headquarters CPCI support technician by e-mail and had his new work computer linked to the CPCI system. January 2008 PSI at 66. He also admitted at that time that he made a mistake because he did not have written authorization from his new employer for access to the CPCI system. January 2008 PSI at 67. The individual then stated that although he did not have written authorization for CPCI access from his new employer, he sent an e-mail to a DOE regional official about his need for access to the CPCI system in his new position, and believed that she indicated approval for his having it. Id. at 68-69. I find that these initial responses are consistent with the individual's assertions throughout this proceeding in that he contends that he openly sought to obtain CPCI system access in January 2005 to perform job functions in his new job, and that he made a mistake when he did not obtain official authorization for CPCI access through his new employer, but instead relied on the tacit approval of his supervisor and co-workers.

At the hearing, the individual provided evidence to corroborate that his CPCI system access at his new employer was well known by his supervisor and co-workers. The DOE contractor employee testified that shortly after the individual was hired in January 2005, he began to assist her in the process of obtaining a DOE Q clearance for herself, and that she was aware that the individual had computer access to a DOE system that helped him to identify persons who already had Q clearances and the status of those clearances (the DOE CPCI system). Supplemental Transcript (SUP TR) at 6. She stated that, at that time, the individual told her that he had used the DOE CPCI system in his previous employment and that "it was approved for him to bring it with him." SUP TR at 7. She testified that she assumed that the individual was authorized by his new employer and the DOE to access the CPCI system in his new position. SUP TR at 11-12. She stated that it was common knowledge at their office that the individual had access to the CPCI system, and that she recalled that the individual mentioned his CPCI system access at a meeting with contractor officials, and that "it was just assumed that everybody understood what he was talking about." SUP. TR at 8.

The DOE's CPCI support technician testified that each CPCI system user has an IP address as well as a user name and password. He stated that he was aware that in January 2005, the individual left his old employer and began employment with another DOE contractor. He stated that, at that time, the individual "asked us what he



would have to do to get his IP address changed." SUP TR at 25-26. He testified that on February 2, 2005, he sent an e-mail to the DOE network administrator for all of the CPCI application hardware and software, with a copy to the individual. In that e-mail, he referenced the individual's employment by a new DOE contractor and stated that the DOE network administrator needed to add the individual's new IP address to the DOE regional office overseeing the individual's new employer. He also requested that the individual provide a contact number for his new company's firewall administrator, which the individual then supplied. SUP TR at 28-30. The CPCI support technician testified that he could not recall if he received any verbal authorization for changing the individual's IP address for CPCI system access, but that he assumed that the individual's request was legitimate because he had had CPCI system access in his previous position, and the CPCI support technician was aware that "there was some transferring going on" with the responsibility for security at the DOE facility where the individual worked. SUP TR at 38.

The CPCI support technician testified that changing the individual's IP address and system access required multiple actions by DOE regional and headquarters personnel. 9/ He testified that he may have advised the individual to contact the DOE's CPCI system administrator so that his user profile could be revised. *Id.* He stated that he received an e-mail from the individual, dated February 2, 2005, in which the individual reported that he had just spoken to the DOE's CPCI system administrator, and that she was "setting me" for a connection through the DOE regional office of his new DOE employer. SUP TR at 39.

Based on the individual's assertions and the testimony of his witnesses, I find that the individual clearly acted without proper authorization from the DOE when he obtained access to the CPCI system on his new employer's computer in early 2005. If the individual believed that he needed access to the CPCI system, he should have asked his new employer to submit a written request for

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9/ In this regard, the CPCI support technician stated that the individual's new DOE contractor employer was connected to a different DOE regional office than his former employer. He stated that obtaining a new IP address required the individual to route his IP connection from his new office to his new DOE regional office, and from there to DOE headquarters. He stated that in addition to network connectivity, the individual's profile had to be changed, because the CPCI data provided to users is based on the operations office where they are employed. SUP TR at 31.

authorization to the DOE. If the DOE granted the request, the individual would have been presented with a user agreement to sign, and his employer would have been sent a CPCI access disc for the individual to use to install the access software on his computer. Instead, the individual now admits that he improperly obtained the CPCI access disc from his former employer, and that he obtained the necessary changes in his IP address through requests and conversations with contractor and DOE technical support personnel. The individual's actions in this regard circumvented the DOE's procedures for controlling access to sensitive information, and are a serious violation of DOE rules.

While the individual claims that he received verbal approval for his use of the CPCI system from his new employer's DOE regional administrator, I do not accept this assertion. The record in this proceeding indicates that a DOE personnel security representative contacted the DOE regional official named by the individual, and she told him that she never discussed CPCI system access with the individual. She further stated that she could not have given the individual access to the CPCI system because she did not have such access herself. February 2008 PSI at 5, 7.

After reviewing the record in this matter, I find that the individual deliberately chose to circumvent the correct authorization procedures for his own convenience. When he was asked at his January 2008 PSI if he had been "under the impression" in 2005 that his permission to use the CPCI system transferred to his new employer, he answered "no", and then justified his actions by referring to the demands of his new job. January 2008 PSI at 76. At the hearing, he testified that when he started work with his new employer in January 2005, he believed that he was faced with a "huge job" involving security clearances, and that he needed access to the CPCI system to "get up to speed" with this job. He testified that, at that point, he obtained the CPCI access disc from his former employer and then contacted the DOE's CPCI support technician to transfer his access to his new employer. TR at 108-109. It therefore appears that the individual chose to disregard the DOE's authorization process in order to obtain expedited access to the CPCI system.

At the hearing, the individual admitted that he made a mistake in not following the proper procedures for CPCI system authorization. He also asserted that he has learned a lesson from this experience, and that he intends to follow security protocols in the future. TR at 128. In asserting that the individual's clearance should be restored, the individual's counsel maintained that the individual has held a DOE Q clearance while working for several DOE

contractors over a period of thirty years, and he has no instances of similar problems in his employment record. TR at 92-95, 106. He also presented the testimony of the individual's long time friend, who testified that he has known the individual since high school and considers him honest and trustworthy. TR at 80. The long time friend also stated that he had occasional business dealings with the individual when they worked at the same DOE facility for several years, and he observed that the individual was professional and "right down to the line" about following rules and procedures. TR at 83-84.

I am not convinced that the individual has mitigated the Criterion G concerns relating to his unauthorized use of the CPCI system. See *Revised Adjudicative Guidelines*, ¶ 35(a) and (c). One mitigation criterion is a finding that a person's failure to follow a security procedure was "infrequent" or "unusual in nature". For several months, from late January until May 2005, the individual knowingly accessed protected information in the CPCI system without authorization, thereby jeopardizing DOE security. I do not find that five months of ongoing unauthorized access to the CPCI system constitutes "infrequent" behavior within the meaning of the *Revised Adjudicative Guidelines*. Moreover, given the extent of the individual's failure to comply with rules for the protection of sensitive information, I cannot conclude that this behavior is unlikely to recur and that it does not cast doubt on his reliability and good judgment. The individual's long experience with security procedures should have imbued him with the importance of obtaining proper authorization before accessing sensitive DOE information systems such as the CPCI. I therefore conclude that the individual has not mitigated the DOE's Criterion G concerns. *Id.*

#### B. *The DOE's Criterion L Concerns*

With respect to Criterion L, the DOE refers to the individual's actions in early 2005, when he illegally used a CPCI access disc and informal contacts with DOE personnel to gain access to the CPCI system without the permission of the DOE, and finds that these actions indicate that he engaged in unusual conduct which tends to show that he is not honest, reliable or trustworthy. For the reasons discussed with respect to the DOE's Criterion G concerns, I find that the individual committed these acts, and that the individual has not established that such behavior is unlikely to recur. Accordingly, I conclude that the individual has not mitigated the Criterion L concerns arising from these actions. See *Revised Adjudicative Guidelines*, ¶ 32(a).

In addition, the DOE refers to the individual's admission at an October 2008 polygraph interview that he improperly handled and disposed of a DOE document containing PII. Specifically, the individual admitted that he accidentally removed a DOE form containing PII from his work location when he retired from a DOE contractor position in January 2005, and that when he discovered the form in 2008, he shredded it without informing his former employer or the DOE. At the hearing, the DOE classification officer testified that when the individual inadvertently took the document home, the DOE lost control of the document, and the document should have been reported as a potential compromise of PII when it was discovered. He stated that the DOE needed to see the document so that it could contact the individual named on the form and warn him of the risk that his personal information had been compromised. TR at 49.

The individual stated that when he retired from the DOE contractor position in January 2005, he placed the box of personal papers from his office in the basement of his home, which was unfinished and unused. Later, he transferred that box with some other boxes to a small room in his home. In 2008, he examined the contents of the box and discovered the DOE form containing PII. He testified that when he saw the DOE form, he recognized that it was not his property and that he should not have it in his possession, so he immediately shredded it. TR at 120-123. He stated that he did not believe he needed to report his discovery of the DOE form if he destroyed it right away, and the information was not compromised. 10/ He stated that he now understands that such documents need to be reported to the DOE for security and tracking purposes. TR at 129.

The individual acted carelessly when he inadvertently packed a DOE form along with his personal papers, and when he did not follow procedures for reporting possibly compromised PII. The individual asserts that he now understands and will follow the proper DOE reporting procedures when he encounters possibly compromised PII. I am not convinced. In light of my findings in this decision that the individual ignored DOE procedures for obtaining authorized use of the CPCI system and that he did not provide complete information to the DOE concerning that matter, I cannot conclude that the individual will reliably report possibly compromised PII to the

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10/ In this regard, the individual's wife testified that she had not seen the box containing these papers, and that their ten year old son was not interested in her husband's papers, and would be unlikely to disturb them. TR at 88, 91.

DOE. Accordingly, I find that the individual has not mitigated that DOE's Criterion L concerns.

*C. The DOE's Criterion F Concerns*

False statements by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. See e.g. *Personnel Security Hearing (Case No. VSO-0281)*, 27 DOE ¶ 82,821 at 85,915 (1999), *aff'd*, 27 DOE ¶ 83,030 (2000) (terminated by Office of Security Affairs, 2000).

With regard to Criterion F, the DOE raises the concern that at his January PSI, (i) the individual was not able to explain how he obtained CPCI access disc, which he used to access the CPCI system, and (ii) on several occasions he changed his explanation to fit with the questions he was asked. After reviewing the record in this matter, I find that the individual has not offered a consistent or convincing explanation for how he obtained the CPCI access disc that he used in 2005 to set up an access site for the CPCI system on his computer after he began working for a new employer. When he was first asked how he obtained the CPCI access disc to install the program on his new computer, he replied "either they mailed me a copy, a CD to install it, or what. I don't remember exactly, they mailed me a CD I believe." January 2008 PSI at 69. At his February 2008 PSI, the individual changed his explanation by indicating other possibilities for obtaining the CPCI access disc, such as from his previous employer. He further stated that he did not know what he did with the CPCI access disc after he installed the CPCI access program on his new work computer. February 2008 PSI at 3-17. Finally, at his October 2008 DOE polygraph interview, the individual offered the names of four individuals at his former employer from whom he may have obtained the CPCI access disc. Polygraph Examination Report at 3-4, October 27, 2008, DOE Exhibit 9.

At the hearing, the individual testified that the conflicting explanations that he provided to the DOE concerning how he obtained the CPCI access software disc arose because he was unable to recall which of several possibilities for obtaining the software disc actually occurred. He stated that when he was using the CPCI system at his pre-2005 position, he would receive CD's by mail from the DOE to update his access to the CPCI system. He therefore regarded receiving a CPCI access disc by mail from DOE headquarters

or from the DOE regional office as a possible means of obtaining the CPCI access disc. 11/ However, he testified that, after much reflection, he now believes that he most likely obtained the CPCI access disc from a former co-worker. He testified that he believes that in January 2005, he visited the offices of his former employer and was provided the CPCI access disc from one of two or three former co-workers, after he explained that he would continue to need CPCI system access in his new position with another DOE contractor. He testified that once he installed the CPCI access disc on his new work computer, he contacted the headquarters CPCI support technician, who linked his computer to the CPCI system. TR at 109-113. He testified that he remains uncertain whether he left the CPCI access disc in his office when he was laid off in May 2005, or whether he returned it to the person from whom he obtained it. TR at 138.

I am not convinced by the individual's assertion that he has no firm recollection concerning who provided him with the CPCI access disc in January 2005, or what he did with the CPCI access disc after using it. While the passage of three years from his use of the CPCI access disc in 2005 until his 2008 PSIs may allow some memories to fade, the actions and events at issue here were unique and traumatic in their impact on the individual, and therefore he should have remembered. The individual obtained and used the CPCI access disc in late January or very early February of 2005. In May 2005, his employer reprimanded him for obtaining unauthorized access to the CPCI system, and shortly thereafter terminated his employment through a layoff. At his January 2008 PSI, the individual stated that he believed that the reprimand concerning his unauthorized CPCI access led to his being laid off. January 2008 PSI at 81. Under these circumstances, I find that the individual should be expected to retain a recollection of his own actions that he believed resulted in his loss of employment.

Accordingly, I am not convinced that the individual's failure to identify the exact source of the CPCI access disc, or his disposition of that disc, was not deliberate. Anyone seeking access authorization must be willing to respond to the DOE's requests for information in a true and complete manner. The limited or selective disclosure of information regarding a security

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11/ The DOE CPCI support technician testified that in 2005 and before, DOE contractors with access to the CPCI system were periodically sent CDs that updated the software in the CPCI access program, and that these CDs were used to upgrade the computer of each user who was accessing the CPCI system.

concern cannot mitigate that concern. See *Personnel Security Hearing*, Case No. TSO-0202 (2005) (Hearing Officer found that an individual who was not candid in describing his meeting with a hired escort did not mitigate the security concerns arising from that incident), see also, *Personnel Security Review*, Case No. VSA-0038 (2001) (The OHA Director concluded that an individual raised a security concern when he failed to disclose to the DOE the circumstances that resulted in a positive drug test. "The key here is that a person seeking a security clearance is under a continuing obligation to be completely honest and open with the DOE, and to keep the DOE fully informed with regard to matters that bear on his access authorization."). In this instance, the individual's purported inability to identify the source of the CPCI access disc was in fact a refusal to respond with complete candor when the response might implicate others, and serves to cast doubt on the individual's eligibility for access authorization.

As I stated to the individual at the outset of the hearing, an affirmative finding regarding eligibility for access authorization is possible only for individuals who cooperate by providing full, frank and truthful answers to the DOE's relevant questions. TR at 8. Based on this evidence, I find that the individual has not mitigated the Criterion F security concern raised by his failure to adequately account to the DOE for his unauthorized acquisition and disposal of a CPCI access disc in 2005.

#### V. CONCLUSION

For the reasons set forth above, I find that the individual's past conduct and statements have raised concerns under Criteria G, L and F. Further, I find that the derogatory information under Criteria G, L and F has not been mitigated. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. It is therefore my conclusion that the individual's suspended access authorization

should not be restored. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods  
Hearing Officer  
Office of Hearings and Appeals

Date: September 25, 2009